



STATE OF ARKANSAS

Office of the Attorney General

Winston Bryant
Attorney General

Telephone:
(501) 682-2007

Opinion No. 94-091

June 2, 1994

The Honorable Steve Bell
State Senator
500 East Main, Suite 208
Batesville, Arkansas 72503

Dear Senator Bell:

This is in response to your request, on behalf of the Mayor of McCrory, for an opinion on the following question:

When a city has one retired policeman drawing benefits from a local pension fund, established prior to 1983, and that fund becomes depleted before the state turnback is received, does the recipient continue to receive only the 10% of bonds and fines plus a local court cost for that fund that is collected, or does the city have to make up the difference in what is collected through those costs and the amount of his monthly pension from the general fund?

I assume that "state turnback" refers to the insurance monies received by August 1 of each year under A.C.A. §§ 24-11-301 to -303 (1987), and that the 10% of "bonds and fines" refers to those funds received by the pension fund pursuant to A.C.A. § 24-11-413 (Cum. Supp. 1993).


It is my opinion that the retiree should receive any amounts in the pension fund which are available to pay his benefit, but that the city should not make up the difference from the city general fund. In this regard A.C.A. § 24-11-416 provides as follows:

If, at any time, there should not be sufficient money in the fund to pay each person a full amount to which he may be entitled, the beneficiaries shall be paid by prorating the fund available among them.

Although there is only one beneficiary in the facts presented by your question, it is my opinion, in light of the language above, that he should receive only the available monies, without the difference being made up with city general funds. It should be noted, additionally, that the statutes do not provide for "backpay" when sufficient funds are received, but only the monthly pension amount, assuming funds become available. This was essentially the conclusion of Op. Att'y Gen. 92-345 (copy enclosed) (in response to question 4 therein).

The foregoing opinion, which I hereby approve, was prepared by Deputy Attorney General Elana C. Wills.

Sincerely,



WINSTON BRYANT
Attorney General

WB:cyh

Enclosure